



## **Justice Select Committee**

**Inquiry into the impact of changes to civil legal aid under the Legal Aid,  
Sentencing and Punishment of Offenders Act 2012**

**Submission of evidence by Coram Children's Legal Centre**

**April 2014**

Coram Children's Legal Centre (CCLC), part of the Coram group of charities, is an independent charity working in the United Kingdom and around the world to protect and promote the rights of children, through the provision of direct legal services; the publication of free legal information online and in guides; research and policy work; law reform; training; and international consultancy on child rights. Founded in 1981, CCLC has over 30 years' experience in providing legal advice and representation to children, their parents and carers and professionals throughout the UK. CCLC's Legal Practice Unit specialises in child and family law, education law, community care law and immigration and asylum law. CCLC operates several free advice phone lines including the Child Law Advice Line (CLAL) and the Migrant Children's Project (MCP) advice line. The Migrant Children's Project at CCLC is a centre of specialist expertise on the rights of children subject to immigration control. As part of CCLC's work to promote the implementation of children's rights, CCLC has undertaken amicus curiae interventions in a number of significant cases, including in the European Court of Human Rights, the Supreme Court and the Court of Appeal, providing assistance to the court on matters of children's rights and best interests.

1. Coram Children's Legal Centre (CCLC) welcomes the opportunity to submit evidence to the Justice Select Committee on the impact of changes to civil legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPOA). CCLC currently holds the following Legal Aid Agency contracts: (a) 2013 Community Legal Advice Contract, under which it provides specialist help in the category of education law; (b) 2013 Standard Civil Contract, with office schedules naming the category of family law (for its offices in London and Colchester) and immigration-asylum law (for its London office); and (c) 2010 Standard Civil Contract, with office schedules naming the category of community care law (for its offices in London and Colchester). As well as being a legal aid provider, CCLC has also experienced the effects of the legal aid cuts through our work providing free advice line services and outreach advice services to thousands of callers each year through the Child Law Advice Line and the Migrant Children's Project advice line and outreach work. We have limited our submission to the inquiry questions that are most directly relevant to our expertise and experience.

**Question 1: What have been the overall effects of the LASPO changes on access to justice? Are there any particular areas of law or categories of potential litigants which have seen particularly pronounced effects?**

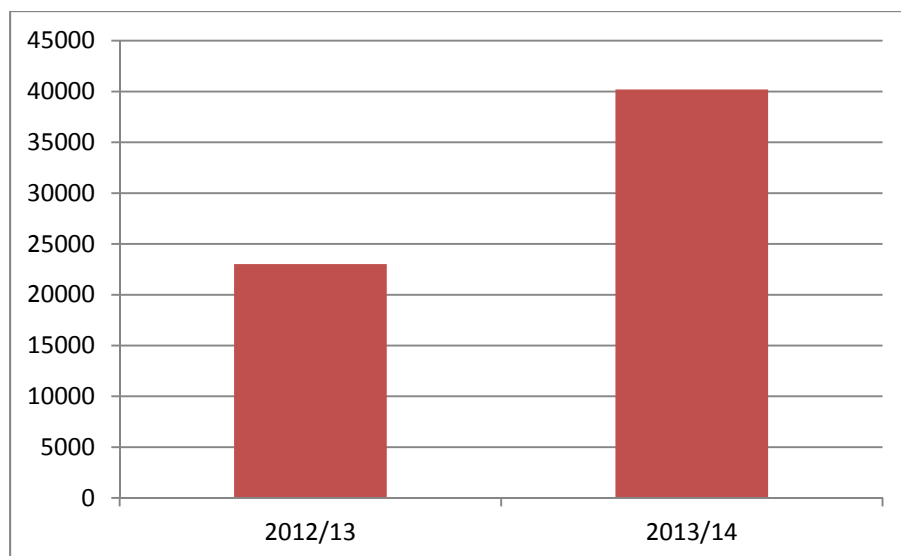
2. CCLC is deeply concerned that the changes to legal aid brought in under LASPOA are having a profoundly negative impact on access to justice, including for some of the country's most vulnerable people, and on children's access to justice in particular. Removing whole areas of law from scope has meant that people who cannot afford to pay for legal advice, assistance or representation are, in many cases, not able to use the justice system to take action to secure their rights or access services to which they are entitled. The purpose of legal aid is to ensure that no individual is unable to enforce or defend their rights because they do not have the resources to do so. In our experience, the impact of changes to legal aid under LASPOA has meant that, in practice, many individuals who are unable to pay privately for legal services are denied access to justice. Many of these individuals, including children, are unable to negotiate often complex administrative and legal problems on their own. Limited

alternative provision exists and any alternative, free sources of information and advice that do exist are either unable to meet the scale of demand caused by the withdrawal of legal aid, or are unsuitable for individuals who require more intensive one-to-one services. This has meant that many individuals are simply unable to take legal action to secure their rights and entitlements and access justice.

### CHILD/FAMILY AND EDUCATION LAW

3. One of the very few alternative sources of free advice in out-of-scope child and family law and out-of-scope education law is CCLC's Child Law Advice Line (CLAL). The CLAL is a Department for Education funded telephone help line open 8am to 8pm providing free legal advice and information to members of the public on family, child and education law. It provides advice to thousands of callers per year. The CLAL has experienced an exponential increase in demand for legal advice following the legal aid changes under LASPOA coming into effect on 1 April 2013. Examination of data on calls to the CLAL indicates that this increase can, in large part, be attributed to cuts to legal aid.
4. Chart A demonstrates that the volume of calls into the CLAL has almost doubled in the year following the cuts coming into effect (up to 31 March 2014), compared to the previous year. The total volume of unique callers<sup>1</sup> to the line rose from 23,017 in 2012/13 to 40,192 in 2013/14.

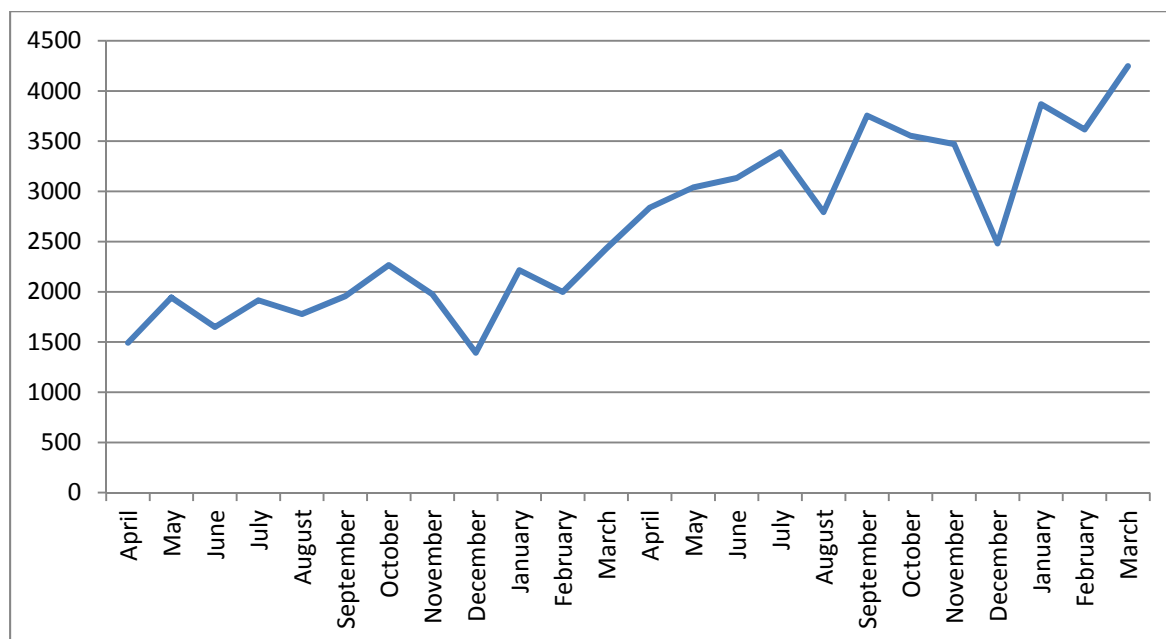
**Chart A: Number of unique callers into Child Law Advice Line, 1 April to 31 March**



5. The following charts give month-by-month breakdowns of the number of callers to the CLAL, showing an overall pattern of increasing demand for the service. The number of unique callers rose from 1,492 in April 2012 to 2,839 in April 2013, the first month after the cuts came into effect, representing an increase of 50%. By March 2014 there were 4,248 unique callers.

<sup>1</sup> Unique callers are the number of unique phone numbers that were logged by the CLAL, regardless of whether or not these calls were answered, or the number of times an individual number was logged.

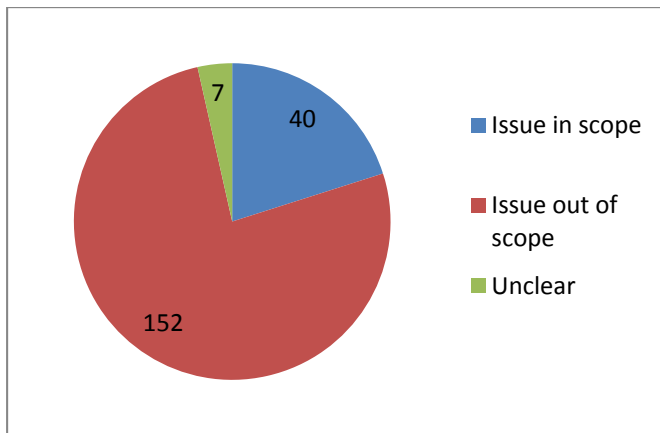
**Chart B: Month-by-month breakdown of number of unique callers into Child Law Advice Line, 1 April 2012 – 31 March 2014**



6. The vast majority of callers to the CLAL from 1 April 2013 to 31 March 2014 appeared to be seeking advice on matters that were removed from scope under LASPOA, suggesting that the rise in demand on the CLAL since April 2013 can, at least in part, be attributed to the scope reductions under LASPOA.
  
7. In March 2014 we undertook an in-depth analysis of calls, allowing us to assess the impacts of LASPOA in more detail. This analysis involved a sample of 250 calls, with 299 distinct legal matters. We estimated that in 199 of the 299 matters, the caller would be financially eligible for legal aid. Of these matters where the caller would be financially eligible, a large proportion were about an issue that is now out of scope. Of all 199 matters logged in which the caller would be financially eligible for legal aid, 76% of the matters (152 of 199 matters) are now outside the scope of legal aid, so the caller no longer has access to legal aid where they would have previously.<sup>2</sup>

**Chart C: Number of issues logged from callers to the CLAL according to whether in or out of scope of legal aid**

<sup>2</sup> The analysis was carried out by legal matter, rather than caller (as some callers were phoning about more than one matter, some of which were in scope and some of which were not). An estimation of financial eligibility was determined using three indicators based on legal aid eligibility requirements: income, amount of assets (property); and amount of cash assets (money in bank account/s).



8. Among our sample of 299 matters, 199 were matters where we estimated that the person would be financially eligible for legal aid. Of the 199, 152 matters were in out-of-scope areas. Looking at these 152 financially eligible but now out-of-scope matters (see Chart C), 100 (66%) were private family law matters, for example residence or contact. A further 21 matters (14%) concerned education issues that are now out of scope (admissions, behaviour, complaints, exclusions, non-attendance). An examination of advisers' notes from the sample of calls received in March 2014 demonstrated that callers who seek advice in relation to family and education law issues are particularly likely to experience pronounced negative effects by not being able to access legal aid, as detailed below.

***Private family law matters involving children***

9. In our experience, potential litigants in private family law matters have been particularly negatively affected by their lack of access to legal aid. As noted above, many of the issues that callers to the CLAL seek advice on concern private law disputes involving children, including, in particular, residence and contact orders (now known as 'child arrangement orders'<sup>3</sup>). Legal aid has not been available for legal advice, assistance or representation for these matters since LASPOA came into effect, except in particular circumstances (e.g. where there is evidence of domestic violence or child protection concerns). Disputes about welfare arrangements for children can be extremely contentious, and can have a particularly damaging impact on all parties involved, including children, where these are not resolved in a fair and just manner. It is essential that parents are, where required, able to access independent legal advice in these matters. CCLC's experience over the past year has demonstrated that denying legal aid for private family law matters involving children has had an extremely negative impact on potential litigants and on children's welfare. We highlight some of the particular problems that we are seeing below.

*Persons may be denied access to justice where their matter is too complex to be resolved using over-the-phone advice or other alternative forms of delivery*

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<sup>3</sup> s.12, Children and Families Act 2014.

10. Private family law matters are frequently complex and family justice processes difficult to negotiate without access to quality, independent legal assistance. Some callers to the CLAL were phoning in relation to complex matters with lengthy histories. Providing over-the-phone advice to these callers can be wholly unsuitable, as particularly complex cases require in-depth, face-to-face legal assistance. Without such advice, persons will be unable to take the necessary steps to solve their problems and avoid damaging consequences for children.

Case study 1: Advice on a Residence Order appeal case with complex history

The caller, a father, had a Residence Order for his daughters, and contacted the CLAL seeking advice in relation to ongoing proceedings in which the mother had applied for full residence of his daughters. The mother had contact under a Contact Order, and the father was concerned about his children's reports of abuse by the mother during contact. The caller reported that there had been a history of domestic abuse in his relationship with the mother, including her sexually abusing him and exerting extreme financial control over him (including holding his immigration documents, preventing him from working). However, no reports had been made to the police. The caller had had a fact-finding hearing one month before, and the judge ruled that he would not consider the financial aspect of the domestic abuse allegations. The caller also believed that the judge made a mistake of fact in attributing evidence from a GP to him, when the evidence concerned the mother. The father suffered an emotional breakdown during the proceedings, finding the process extremely stressful.

The adviser could provide information about the court process, including which forms to lodge, and general information about which matters can be the subject of an appeal. However, the matter was too complex for the adviser to give adequate advice over the telephone on grounds of appeal. The caller has no access to legal aid unless he can provide evidence of domestic violence that meets the Legal Aid Agency's requirements, which, in the absence of reporting of the abuse in this case, is unlikely. He cannot afford to pay privately for a family lawyer.

11. Family court hearings are frequently long-running and complex. Advice provided over the telephone can be wholly unsuitable in these cases, in which more intensive assistance is required. It is essential that both parties have access to independent legal assistance in order to be informed and prepare for hearings, and to ensure that the relevant facts are presented to the court so that the court is able to make a decision based on the best interests of the child or children concerned.

*Persons may be denied access to justice where they lack the capacity or ability to negotiate a legal process by themselves*

12. In our experience, many individuals do not have the capacity to negotiate complex areas of law or cases on their own. Some callers to the CLAL lack the capacity to negotiate legal processes effectively without the assistance of a lawyer. This is particularly evident where callers cannot read or write or have learning difficulties or other vulnerabilities that impair their ability to complete and submit court forms, prepare for legal proceedings and represent themselves in court. Without one-to-one legal advice, assistance and representation, some callers can be left without the ability to make legal claims and take action to enforce their rights.

Case study 2: Advice on a complex case where the caller lacks capacity to understand legal processes

A mother called the CLAL seeking advice on enforcement and variation of a Contact Order for her six-year-old daughter, currently living with her grandmother under a Special Guardianship Order. There was a history of domestic violence between the father and mother, and both parties had been made vexatious litigants. The case had a long and complex history. There were 26 telephone communications logged between the caller and the CLAL in relation to this one matter. It was clear that the caller did not understand the legal process, and was confused, requiring advisers to repeat advice continuously. The caller required intensive one-to-one legal assistance in preparing court forms and understanding the application of the law, but was unable to access legal aid or pay privately for legal assistance.

Case study 3: Advice for caller with learning difficulties in child custody case

The caller was a father seeking advice in relation to the care arrangements for his two children (aged seven and five years), following their mother leaving the family home. The mother had initially taken the children to stay with the maternal grandparents. The caller reported that the children did not want to do this, and that they were afraid of the grandmother. The caller had previously intervened to stop her smacking the children. The caller, following a report to police and social services, collected the children and returned them to his home. The caller applied for and was granted an Emergency Residence Order. A further hearing was scheduled for eight weeks' time and the caller sought advice on his legal position and what process would follow. The caller could not read or write and was dyslexic, and was unable to complete court forms on his own. He had no access to legal aid for a family lawyer to assist him and he could not pay privately.

13. Private family law cases are often highly emotive and can be traumatic for parties, particularly where children are involved or are the subject of proceedings. In these cases, it can be very difficult for persons to prepare a case and represent their case in court, without independent legal assistance or representation. The impact of a court process, in itself, can have a negative psychological impact on the parties involved, and this can be compounded by a lack of access to legal services.

Case study 4: Need for legal assistance to prevent negative psychological impact on parties to proceedings

The caller left her son's father when the child was a few months old. The relationship was abusive. The caller, who had a Residence Order in her favour, had been taken to court by the father 22 times in the past four years, for variation and enforcement of contact orders. The caller reported that she had accrued a large debt as a result of having to go to court several times following the legal aid scope changes. She was in debt to solicitors she hired shortly after legal aid cuts came into effect, and was struggling to make the payments. She had hired the solicitors as she had post-natal depression and PTSD, and could not face self-representing in court.

*Persons may be denied access to justice in family matters where there is an unequal power balance in a relationship*

14. A significant number of callers to the CLAL reported having been in an abusive or controlling relationship or a relationship otherwise characterised by unequal power. Without access to legal assistance in these cases, legal proceedings can be particularly traumatic and difficult, and may lead to one party not pursuing court proceedings at all. Where one party to proceedings is legally represented, this can cause the other party to feel intimidated.

Case study 5: Intimidation caused by lack of access to legal assistance and a controlling ex-partner

The caller sought advice in relation to a variation of an informal contact agreement. The caller's son lived with the caller on an informal basis. There had been a verbal agreement about when contact would take place but the ex-partner had been demanding more contact. The caller was also concerned about her ex-partner's coercive behaviour and the involvement of her ex-partner's new partner in her son's life. The caller had received a letter from her ex-partner's solicitor setting out a new contact arrangement and threatening court action if she did not agree. The caller could not afford to pay a lawyer should the matter go to court, and could not access legal aid. She reported feeling intimidated at the thought of self-representing, as she knew her ex-partner would have a solicitor to represent her.

15. Though legal aid is available, under LASPOA, in private family law cases involving domestic violence, there is a requirement for particular forms of evidence to be provided (see Question 8 below). This can leave many persons without the ability to access legal advice.

Case study 6: Intimidating ex-partner

The caller sought advice on the enforcement of a court order against the father of her teenage daughter, who did not have parental responsibility. The order stated that the father was only allowed indirect contact with the child, through a letter on birthdays and Christmas and nothing more. The caller reported that the order was put in place due to domestic violence between her and her ex-partner. The caller was concerned as she had recently discovered that he had been having phone contact with the daughter and arranging to meet with her. She was concerned for the wellbeing of her daughter. The caller was advised to make an application to the court for enforcement of the order. The caller felt very intimidated by her ex-partner and also had difficulties speaking English. She would face considerable challenges making a court application and representing herself in court in this matter.

***Out-of-scope education law matters***

16. CCLC is one of three providers in legally aided education law matters, and delivers services through the Education Line, via Civil Legal Advice. Since April 2013, anyone seeking free education law advice must access it via a mandatory telephone gateway. That gateway is run by an operator service, which will 'triage' the calls, determining whether a client is within scope for assistance and eligible for legal aid.. If a client is eligible, they are passed through to one of three specialist firms (CCLC being one of them). If they are not eligible, the client is referred to alternative advice organisations such as Citizen's Advice.
17. In the 12 months prior to LASPOA coming into effect (1 April 2012 – 31 March 2013), 803 matters were commenced by CCLC through referrals to the Education Line, and 525 of these



cases concerned matters that are now out of scope. In the 12 months following the coming into force of LASPOA (1 April 2013 – 31 March 2014), the number of cases commenced by CCLC through referrals to the Line was reduced by almost 50% (484 matters). This suggests that hundreds of parents are no longer able to access legal advice and assistance from the National Education Line as their matters are now out of scope.

18. As cases concerning out of scope matters are no longer put through to specialists from the operator service, it is difficult to measure the impact of LASPOA on individuals through the Education Line. However, our Child Law Advice Line receives many calls relating to out-of-scope education law matters, and CCLC has secured private funding through BBC Children in Need to fund legal assistance for some cases involving vulnerable persons who do not qualify for legal aid. We therefore have some insight into the impacts that the LASPOA changes have had in out-of-scope education law matters.
18. One of the education law areas now out of scope is school exclusions. Legal aid was formerly available for legal advice and assistance in relation to school exclusion (but not for representation). School exclusions affect thousands of pupils every year. In 2011/12, there were 5,170 permanent exclusions of students from schools, and there were 304,370 fixed term exclusions recorded.<sup>4</sup> Owing to the serious consequences that permanent exclusions can have on children, their parents and society as a whole, it is highly important for a Head Teacher's decision to exclude a pupil to be subjected to rigorous and independent review, and for a parent or carer to be ensured access to justice in this review process.
19. Parents or carers of pupils who have been excluded can appeal the exclusion decision first to a Governors' Disciplinary Committee and then to an Independent Review Panel (IRP). The decision to exclude a pupil can only be overturned by the governing body; the IRP can now only recommend that a child be readmitted. In 2011/12, 30.7 per cent of IRP appeals were found in favour of the parent,<sup>5</sup> demonstrating that the decision-making by schools can be unlawful or unreasonable in a significant number of cases, and must be subject to a fair review process, in which parents have access to legal advice, assistance and, where required, representation.
20. Without access to legal aid, parents are left with the option to pay privately (which will not be possible for all parents), go through the process themselves, or abandon an appeal. Research and our own experience have shown that parents and children do not always have the capacity to negotiate exclusion appeals processes, which can be very complex. Independent Review Panel hearings tend to be quite formal, rigid and adversarial, and can

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<sup>4</sup> Department for Education, Statistical first release: *Permanent and fixed period exclusions from schools and exclusion appeals in England*, 2011/12, 25 July 2013, available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/224893/SFR29-2013.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/224893/SFR29-2013.pdf)

<sup>5</sup> Department for Education, Statistical first release: *Permanent and fixed period exclusions from schools and exclusion appeals in England*, 2011/12, 25 July 2013, available at:

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be quite intimidating for many parents.<sup>6</sup> Throughout these processes, schools and local authorities will, in our experience, generally be legally represented. Lawyers can ensure a degree of 'equality of arms' in these processes even where they are not appearing in person, through assistance in gathering evidence, preparing submissions and advising parents on relevant laws and guidance and how to apply these laws and guidance. Without access to legal aid, many parents will simply be unable to access justice.

21. Admission appeals are also not straightforward for many parents, particularly the grounds of appeal. Understanding and application of the procedures to individual facts will determine the likely success of the appeal and hence those who do have grounds to succeed must set this out in the application, otherwise the appeal will fail.
22. The law is an important tool for ensuring that children have access to education, and removing areas of education law from scope of legal aid is likely having a very negative impact on the ability of children and young people to secure their right to and rights in education. Depriving children of quality education not only robs individual children of the opportunity to develop to their full potential and secure their wellbeing, but it can also lead to powerlessness, an inability to participate effectively in society, entrenched poverty and the exacerbation of existing inequalities in society. Access to legal advice and representation is essential to ensuring that children and young people can access suitable, quality education.

## **IMMIGRATION LAW**

23. Following cuts to legal aid in non-asylum immigration cases, very few alternative sources of provision exist for those who cannot pay privately. There is therefore very heavy demand for the free advice services offered by the Migrant Children's Project at CCLC. These services include a telephone/email legal advice line open five days per week to children, young people, parents and carers as well as voluntary and statutory sector professionals, which currently deals with over 100 queries per month. As well as the advice line, deliver outreach advice involving one-off, face-to-face appointments in organisations across London such as children's centres, homelessness services and community groups.
24. In March 2014, the MCP advice line dealt with 101 queries. Not all of these queries were about individual cases, as some were also general enquiries about the law, e.g. from social workers, but many of the calls were about specific cases of children, young people or families. Based on the information available to us, we estimated that at least 59 of the 101 queries involved children/young people/families who would meet the financial eligibility requirements for legal aid. Of those 59 queries, there was a need in 42 (71%) of them for legal representation in an out-of-scope area, most commonly in immigration law (37 of the 42), with needs also evident in the areas of private family law, welfare benefits and housing.

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<sup>6</sup> Neville Harris, 'Education law: Excluding the Child' (2000) 12 (1) *Education and the Law* 31, at p. 125; The Council on Tribunals, *School Admission and Exclusion Appeal Panels: Special Report* (2003), para. 3.11 (concerning Independent Appeal Panels).

25. The children, young people and families we support have been hit incredibly hard by the LASPOA cuts. In our experience, many cannot realise their rights in practice, whether because they cannot make an application at all, because they can make an application but are unrepresented or represented only in part of their case, or because they have to go through appeal processes or deportation proceedings without legal assistance. The consequences are that children's claims are not put forward or decided properly, children's best interests are not considered in line with domestic and international legal obligations, people are unable to obtain and maintain legal status, and ultimately children and families could face separation, removal or deportation in breach of their rights.
26. Our ability to assist our clients has been severely tested where they evidently need legal representation in their immigration cases but so few onward referral paths exist for them. A significant proportion of the families we work with are destitute or living on very low rates of asylum support or local authority support, and there is no prospect of them obtaining private legal services. Representing themselves is often not possible due to separated children's young age, language barriers and significant vulnerabilities, and the extreme complexity of immigration law and the Immigration Rules.

#### Case study 7: Child facing deportation

The caller sought advice on how to assist a 17-year-old young person who was a foreign national and who had been in the UK since he was a small infant. He had been convicted of a criminal offence and was serving his criminal sentence in a Young Offenders Institution. He had indefinite leave to remain but the Home Office had written to him to say that they were considering revoking his indefinite leave to remain and deporting him to his country of nationality when he turned 18 and finished his sentence. He did not understand what was happening. His family could not afford to pay for a private solicitor for him.

#### **Question 4: What effects have the LASPO changes had on (a) legal practitioners and (b) not-for-profit providers of legal advice and assistance?**

27. The LASPOA changes have dramatically changed the legal aid landscape. One of the effects on legal practitioners has been to create ethical challenges in the representation of clients. Where a solicitor is representing a child in their asylum case, for example, and there are also out-of-scope immigration arguments to be made in the case (e.g. Article 8 ECHR), it is very difficult for the solicitor because they will not get paid for the work on the immigration case but will not be acting in the best interests of their client if these arguments are not made.
28. As detailed above, CCLC, a not-for-profit provider, has experienced huge changes since 1 April 2013. Calls to the Child Law Advice Line have dramatically increased, and we are trying to assist people who are struggling to understand the law and how to solve their legal problems. In our work with migrant, asylum-seeking and trafficked children, young people and families, we are facing significant difficulties in assisting people to take steps to resolve their cases, because we are able to help them to identify what they should do, but then they have no legal representation available to them in a vastly complex area of law. This has posed a challenge for the services we provide.

**Question 7: What is your view on the quality and usefulness of the available information and advice from all sources to potential litigants on civil legal aid? Do you have any comments on the operation of the mandatory telephone gateway service for people accessing advice on certain matters?**

29. CCLC is one of the three national providers for in-scope education law via the telephone gateway. We have found that when a person calls one of our other advice lines (the CLAL or MCP advice line), it is difficult to explain to them about the telephone gateway system and that they have to call Civil Legal Advice to be put through to a solicitor. In our view, many people struggle to identify their legal issue and whether they could access legal aid in relation to these issues. For example, we have had calls to our MCP advice line about education law that may be in scope (potential judicial reviews and discrimination cases where a child has been unlawfully denied a school place) and our clients - especially those for whom English is not their first language - have found understanding the process of calling CLA difficult.

**Question 8: To what extent are victims of domestic violence able to satisfy the eligibility and evidential requirements for a successful legal aid application?**

30. Under LASPOA and the Civil Legal Aid (Procedure) Regulations 2012, legal aid for private family law matters which would otherwise be out of scope is available for those affected by domestic violence. However, legal aid for these cases will only be available where a person can provide one of the following pieces of evidence: that their perpetrator has been convicted of a domestic violence offence against them and that conviction is unspent; that their perpetrator has accepted a caution for a domestic violence offence against them within the past 24 months; that there are ongoing criminal proceedings in respect of a domestic violence offence against them; that they have a protective injunction (such as a non-molestation or forced marriage protection order) in force or one has been made within the past two years; that their perpetrator had given an undertaking in respect of domestic violence and the undertaking is still in force or has been made within the past two years and where no cross undertaking has been given; that they have been referred to a Multi Agency Risk Assessment Conference as a high-risk victim of domestic violence and a plan is in place within the past two years; that they have a report from a doctor, nurse or midwife confirming they were examined in respect of an injury or condition consistent with domestic violence within the past two years; that they have been assessed by social services as experiencing or being at risk of domestic violence within the past two years; or that they have a letter from a refuge confirming that they stayed there for a period of more than 24 hours within the past two years.<sup>7</sup>

31. In our experience, providing one of the prescribed forms of evidence is not possible in all cases in which domestic violence is or was perpetrated. This has caused some victims of domestic violence to be denied access to legal assistance in making family law applications. Preparing a case and self-representing in court in a matter in which the other party has

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<sup>7</sup> Ministry of Justice, *Legal aid for victims of domestic violence*, available at <http://www.justice.gov.uk/legal-aid-for-private-family-matters/legal-aid-divorcing-separating-abusive-partner>

perpetrated violence will inevitably be extremely challenging. It may result in one party deciding not to take court action, denying them the ability to access justice.

**Case study 8: Lack of evidence of domestic violence**

The caller, the father of a 13-year-old child, sought advice in relation to enforcement of a Contact Order with his ex-wife. Contact between the child and his father had stopped, due to the obstructive behaviour of the mother. The caller reported that he was a victim of domestic violence (emotional abuse and financially controlling behaviour) perpetrated by the mother, but that he had not reported this. The caller had tried to arrange interim contact but the mother had claimed that the son did not want to see his father and did not like to visit his house. The caller had applied for an enforcement order, but the court refused to grant one. The caller wished to appeal this decision, but could not access legal aid, and could not afford to pay privately for a lawyer, as he had been made redundant.

**Question 9: Is the exceptional cases funding operating effectively?**

32. In our view, exceptional case funding is not operating effectively, and is wholly inadequate as a means of avoiding human rights breaches. The number of civil (non inquest) grants under the scheme has been extremely low: of all applications considered as at 31 December 2013, only 3.3% were granted.<sup>8</sup> The scheme appears to be operating with the active aim of refusing funding wherever possible, and is certainly not operating as a genuine safety net for vulnerable people.
33. CCLC has made four applications under the exceptional case funding scheme, all relating to immigration matters. All were refused. The refusal decisions were all very similar, with paragraphs having been cut and pasted from different refusal decisions. In one case, material details about the applicant were incorrect (nationality, gender and timing of arrival in the UK). These refusals did not give the impression that any careful assessment of the individual circumstances had been undertaken. We applied for an internal review of all the refusal decisions, which were again refused.
34. We have some limited funding to do some *pro bono* immigration work, and so this was the basis on which we were able to justify the staff time that was expended on those particular cases. However, even with our additional funding, the extensive time that it took to prepare those applications (and subsequent requests for review) has discouraged us from preparing any further applications.
35. In our view, even those lawyers who were willing to make applications at the outset of the exceptional case funding scheme will quickly stop doing so once it becomes apparent how futile an exercise it is. Lawyers are not remunerated for any work done in assisting a client to

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<sup>8</sup> Statistics published by the Ministry of Justice in March 2014 revealed that, as at December 2013, 1,083 exceptional case funding applications were determined by the Legal Aid Agency and of these, only 35 applications were granted: representing a proportion of 3.3%: Ministry of Justice, *Ad Hoc Statistical Release: Legal Aid Exceptional Case Funding: Application and Determination Statistics*, 1 April – 31 December 2013, 13 March 2014.

make an application under the scheme unless the application is successful, and where the prospects of success are clearly so poor, few if any lawyers will shoulder that risk. Even for funded work, remuneration is made subject to small fixed fees and further reduced hourly rates: the average legal aid firm cannot bear to do additional work at risk.

36. In addition to our own capacity and financial restraints, our experience has been that the process of applying for exceptional funding is difficult for our clients. The clients for whom we made these applications were all vulnerable, and the majority were destitute and had young children. The exceptional funding decision-making process is slow and laborious. This, coupled with the seemingly inevitable negative outcome of the applications, makes for a demoralising and distressing process for clients.
37. In any case, compliance with children's rights should not be provided for by way of an 'exception'.

***Please direct inquiries to:***

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